the Act it is imperative that some finality must be read into the power of the Industrial Court to interpret its own award. Moreover the Industrial Court itself should be regarded as the most competent authority to interpret its own award. For these reasons it is my view that it is not the intention of the statute to allow an applicant to seek this court's aid to quash an order of the Industrial Court under section 33 of the Act.

The conduct of the applicant in the sequence of events referred to earlier is relevant. Certiorari is a discretionary remedy and therefore may be refused not only on the merits but also in the special circumstances of the case. See also *New Zealand Waterside Workers' Industrial Union of Workers* v. *Deputy Judge Dalglish and Members of the Waterfront Industry Authority*(1).

Issue of certiorari being discretionary the court in granting or refusing an application for certiorari is perfectly entitled to consider not only the conduct of the applicant but also the circumstances of the case. This principle is well stated by Wilson J. in *L. Stanley* v. *G.B. Bull*(2).

Even assuming that the applicant company is entitled to apply to set aside award No. 147 of 1980 it is my view that the present application is without merit.

Firstly, I do not think that the Industrial Court acted in excess of jurisdiction under section 33 of the Act by merely setting out its interpretation of clause 14 of the original award and ordering the 18 employees to be paid accordingly. This order of the Industrial Court is amply covered by the authority of section 33(2) of the Act referred to earlier. Sub-section (4) of the same section also provides that the decision of the Industrial Court under that section shall be binding on the parties in the same manner as the original award.

The second complaint of the applicant company was that there was a breach of the rules of natural justice when the Industrial Court relied on Exhibit (U.1) without giving an opportunity to the applicant company to challenge the document. From a look at the award itself and the affidavit filed on behalf of the respondent dated September 4, 1981 I do not think this allegation of the applicant company is true at all because it seems clear that at no time was there any objection or dispute when the exhibit was tendered.

Finally, the allegation that the Industrial Court followed an irrelevant precedent in award No. 142 of 1980 cannot likewise be accepted. The award relied on was an award of the Industrial Court which is a public document and the Industrial Court was perfectly entitled to consider the ruling made by the President in the award. In any case I find a lot of logic in the ruling of the President in the award. To my mind it is immaterial whether there is an express clause stating that collective agreement shall continue after the expiry date until replaced by a new collective agreement. I think this must be necessarily implied. The primary purpose of the Industrial Relations Act is to introduce and sustain a condition of industrial peace and harmony and it would be against all logic to construe that a collective agreement ceaes to operate on a certain date expressed in it and thereafter there is a return to a condition of discord and disharmony in the industrial relationship of the parties concerned.

The contention of the respondent is the correct interpretation and that is that the original award in this case was legally valid and binding on the parties before and after the expiry date until such time that a fresh award or a collective agreement supersedes the collective agreement or any thereof.

For the above reasons the application is dismissed with costs.

Application dismissed.

Solicitors: *Sethu, Ghazali & Gomez; K. Chandra.*

ZULKIFLE BIN MAJUN v. DASON GABAN (AND 20 OTHER PETITIONS)

[O.C.J. (Seah J.) August 25 & November 9, 1981]

[Kota Kinabalu – Election Petitions Nos. 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 & 25 of 1981]

Election Law – Amendment – Application to amend Election Petitions – Allegation of corrupt or illegal practice – Application filed out of time – Application to drop some of the charges and to cure clerical error – Amendments allowed – Election Offences Act 1954, ss. 8, 9, 10, 32(a), (b), (c) 33(1) & (4), 38(1)(a) & (2) & 109(5).

The present case concerned 21 Election Petitions. The applicants in these petitions sought for leave to amend the Election Petitions. Since the charges in paragraph 3 of the

21 Election Petitions were identical, Election PetitionNo. 2 of 1981 was used in argument as the same result would naturally follow.

The petition filed by the petitioner in Election Petition No. 2 of 1981 challenged the validity of the said election on the ground of corrupt practices. It reads as follows:

"And your petitioner says that the said (name of respondent) was personally or by his agents guilty of corrupt practices of aiding, abetting or procuring the commission of the offence of bribery, treating and undue influence before, during and or *after* the said Election contrary to sections 8, 9, 10 and 32(a), (b) and (c) of the Election Offences Act 1954.".

The petitioner sought to amend it by deleting, viz.

a) procuring
b) treating under section 8 of the Election Offences Act 1954
c) after (the said Election) and
d) and section 32(c) thereof,

and by adding the following words "and that the said Election be declared void".

The Notice of Motion in respect of the said Petition was filed out of time contrary to the provisions of section 38(2) of the Election Offences Act 1954. The petitioner submitted that the said application was not for the addition of a fresh substantive charge or charges but to drop or withdraw some of the charges contained in paragraph 3 of the petition as well as to cure a mere clerical error as regards the prayer asked for in the original paragraph under section 32(a) and (b) of the Election Offences Act 1954.

The petitioner also applied to amend the particulars of the charges by means of renumbering, withdrawal and/or substitution thereof.

Held, allowing the application: (1) the withdrawal of the charges of procuring the corrupt practice of treating after the said election contrary to section 8 of the Election Offences Act 1954 would not prejudice the conduct of the respondent in his defence as regards the remaining charges contained in paragraph 3 of the said petition;

(2) the dropping of section 32(c) would not only save time and money but would not prejudice the respondent's defence;

(3) since the proposed amendment by the addition of the words "and that the said election be declared void under section 32(a) and (b)" would make the position in the election petition clearer coupled with the fact that in the prayer, the petitioner had asked for a determination to declare the said election to be void, the court was satisfied that the respondent would not be prejudiced by the said amendment;

(4) substitution of particulars does not mean substitution of fresh particulars of new charges not covered by the charges contained in paragraph 3 of the said election. The principle which guides the judge to allow charges to be amended within the prescribed time under the provisions of section 38(2) would equally apply here;

(5) the word "election" should be construed narrowly to mean the date when the result of the election was declared by the Returning Officer;

(6) A misdescription of the date of an election would not render the election petition a nullity and that a judge has jurisdiction to order an incorrect date to be amended since the respondent cannot be said to be prejudiced thereby by this error;

(7) Leave was thereby given to amend Petitions Nos. 22 and 23 of 1981 to amend the date of election to March 28, 1981 only instead of from March 23 to 28, 1981;

(8) Leave was thereby granted to amend Election Petitions Nos. 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of 1981 interms of the proposed amendments annexed to the Notices of Motions.

Case referred to:

(1) *Maude* v. *Lowley* (1873-74) L.R. 9 C.P. 165, 174.

ELECTION PETITIONS.

D.J. Puthucheary for the petitioners.
Raja Abdul Aziz Addruse for the respondents.

Cur. Adv. Vult.

Seah J.: By these Notices of Motions the petitioners in Election Petitions Nos. 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of 1981 are applying for leave to amend the Election Petitions in such manner as shown in a copy of the petition annexed thereto which proposed amendments are underlined in Red. The applications are opposed by all the respondents herein. Mr. Dominic Puthucheary appears as leading counsel for all the petitioners and Raja Abdul Aziz Addruse appears as leading counsel for all the respondents.

Since the charges in paragraph 3 of the 21 election petitions are identical, leading counsel for the petitioners informed the court that for convenience, he would make use of Election Petition No. 2 of 1981 in his argument as the same result would naturally follow. Leading counsel for the respondents raised no objection to this procedure.

The charges contained in paragraph 3 of Election Petition No. 2 of 1981 read:

"And your petitioner says that the said (name of respondent) was personally or by his agents or by his agents guilty of corrupt practices of aiding, abetting or *procuring* the commission of the offence of bribery, *treating* and undue influence before, during and or *after* the said Election contrary to sections *8*, 9, 10 and 32(a), (b) and *(c)* of the Election Offences Act 1954."

The proposed amendment of this paragraph reads as follows:

"And your petitioner says that the said (name of respondent) was personally or by his agents guilty of corrupt

practices of aiding and abetting the commission of the offence of bribery and undue influence before and during the said Election contrary to sections 9 and 10 of the Election Offences Act 1954 and that the said Election be declared void under section 32(a) and (b)."

In other words, under the proposed amendment the following words are deleted, viz:

a) procuring,
b) treating under section 8 of the Election Offences Act 1954,
c) after (the said Election) and
d) and section 32(c) thereof,

and the following words to be added, viz. "and that the said Election be declared void".

Now, section 33(1) provides that "every election petition shall be tried by the Chief Justice or by a Judge of the High Court nominated by the Chief Justice for the purpose". Unless otherwise ordered by the Chief Justice, all interlocutory matters in connection with an election petition may be dealt with and decided by any Judge of the High Court (see section 33(4)). And it is expressly provided by section 38(2) that "an election petition presented in due time may, for the purpose of questioning the return or the election upon an allegation of a corrupt or illegal practice, be amended with the leave of a Judge of the High Court within the time within which an election petition questioning the return or the election upon that ground may be presented".

The provisions in section 38(2) are *in pari materia* with section 109(5) of the English Representation of the People Act 1949 and this is what *Halsbury's* Laws of England (4th edition) Vol. 15 para. 845 at page 462 has to say about amendment of election petition:

"If a parliamentary election petition has been presented within the period of 21 days from the making of the return, or within 28 days after the payment where there is an allegation of corrupt practice and a specific allegation of payment, then, for the purpose of questioning the return or the election upon an allegation of an illegal practice, the petition may be amended with the leave of the High Court within the time within which a petition questioning the election upon the allegation of that illegal practice could be presented. The provisions as to the time of presentation of a petition alleging an illegal practice or the amendment of such a petition apply whether or not the act constituting the alleged illegal practice amounted to a corrupt practice, and they apply also to the corrupt practice of incurring or aiding, abetting, counselling or procuring the incurring of certain expenses not authorised by the election agent, or making a false declaration about such expenses, as if they were illegal practices.

An affidavit in support of the application is desirable.

The High Court has no jurisdiction to allow an amendment of a petition after the time prescribed by statute by the introduction of a fresh substantive charge; nor to convert an offence charged under one statutory provision into an offence against another related provision, although the facts might support the latter offence. It is submitted that there is no jurisdiction to allow an amendment introducing a fresh charge whether the charge sought to be added is one of a fresh nature, or whether it is one only of a fresh instance not covered by the allegations in the petition as standing. The objection to adding a charge after the time for presenting a petition has elapsed does not apply to withdrawing a charge, and it would seem that this may be done. The withdrawal of that portion of a petition which claims the seat cannot, however, be effected by way of amendment because the rights of the electors would be affected by their not having the opportunity of substituting another petitioner. Allegations which disclose no offence or are otherwise immaterial may be struck out. An amendment to cure a mere clerical error in a charge already made, or a variance between the petition and evidence may possibly be allowed."

When an election petiton is presented within the prescribed time challenging the validity of the election or return on the ground of corrupt or illegal practice, section 38(2) expressly provides that an amendment to the ground can only be made within the period therein specified and only with the leave of a Judge of the High Court. This subsection therefore restricts the right of the petitioner to amend the ground of his petition if it is based on corrupt or illegal practice. If such an application is to be made then it must be filed within the time prescribed in section 38(1)(a), apart from getting the leave of a High Court Judge.

As Lord Coleridge C.J. said in *Maude* v. *Lowley*(1) at page 174:

"The respondent has a right to know once for all within the 21 days what are the precise charges which he has to meet, and may then destroy any documents and vouchers he may possess that might have reference to any other charges. Mr. Tennant has also pointed out that, after the expiration of the 21 days, it would be too late for anyone else to present a fresh petition; and that to allow a petitioner to amend so as substantially to make the amended petition a fresh one, would be conferring upon him a privilege which no other person could possess."

Keating J. in the same appeal said at page 175:

"Anything which materially adds to the charge, especially if it introduces an additional charge, would constitute not an amendment but a fresh petition ... "

Applying this construction to the facts of this case, it is plain that the petition filed by the

petitioner in Election Petition No. 2 of 1981 challenging the validity of the said election or return is based on the ground of corrupt practices. As such, any application to amend the petition must be presented within the time prescribed in section 38(2) of the Election Offences Act 1954 (Revised 1969). The Notice of Motion in respect of Election Petition No. 2 of 1981 was presented on or about August 24, 1981 and leading counsel for the petitioner does not dispute that it was filed out of time. But the leading counsel has argued that the petitioner is not applying for the addition of a fresh substantive charge or charges, by this Notice of Motion. In fact, the essence of the application of the petitioner is to drop or withdraw some of the charges contained in paragraph 3 of the petition as well as to cure a mere clerical error as regards the prayer asked for in the original paragraph under the provisions of section 32(a) and (b) of the Act.

The two-prong attack of leading counsel for the respondent is this. First, it is submitted that since Election Petition No. 2 of 1981 is based on corrupt practice, the application to amend it must be presented within the prescribed period stipulated in section 38(2) of the Act and as the Notice of Motion filed by the petitioner is clearly out of time, the judge has no jurisdiction to entertain it. Alternatively, it is contended that if the judge has jurisdiction to hear the application to withdraw some of the charges contained in paragraph 3 of the said petition, he should not allow it inasmuch as there is a Notice of Motion taken out by the respondent to strike out the said petition on the ground that the petitioner has failed to comply with the provisions of Rule 12(2) regarding the payment of security. It is submitted that to allow the withdrawal of some of the charges of corrupt practices would prejudice the respondent's case in that application.

Since I have already delivered my judgment dismissing the respondent's application to strike out Election Petition No. 2 of 1981 on the grounds, *inter alia*, of petitioner's failure to comply with the provisions of Rule 12(2) of the Election Petition Rules 1954 relating to security for costs, I rule that there is no merit in the alternative submission of the leading counsel of the respondent. With regard to the first submission, I have to reject it in the light of what has been said in paragraph 845 of *Halsbury's* Laws of England (4th edition) Vol. 15 at page 462.

In my opinion, the withdrawal of the charges of procuring the corrupt practice of treating after the said Election contrary to section 8 of the Election Offences Act 1954 (Revised 1969) would not prejudice the conduct of the respondent in his defence as regards the remaining charges contained in paragraph 3 of the said petition. Section 32 provides that

> "the election of a candidate at any election shall be declared to be void on an election petition on any of the following grounds which may be proved to the satisfaction of the Election Judge:
>
> (c) that a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate."

Again, in my opinion, the dropping of section 32(c) would not only save time and money but would not prejudice the respondent's defence. I would therefore allow the provisions of section 32(c) to be withdrawn. In the proposed amendment, the following words are to be added to paragraph 3 which reads:

> "and that the said Election be declared void under section 32(a) and (b)."

In the original paragraph 3 reference is made to section 32(a), (b) and (c) of the Election Offences Act 1954 (Revised 1969). I have already allowed section 32(c) to be dropped. Since the proposed amendment by the addition of these few words would make the position in the election petition clearer coupled with the fact that in the prayer, the petitioner has asked for a determination to declare the said Election to be void, I am also satisfied that the respondent would not be prejudiced by this amendment and I accordingly allow it. In short, I allow the proposed amendment of paragraph 3 of the said petition in such manner as is shown in a copy annexed to the Notice of Motion and underlined in red.

In addition to amend paragraph 3 of the said petition, the petitioner in Election Petition No. 2 of 1981 also applies to amend the particulars of the charges by means of renumbering, withdrawal and/or substitution thereof.

Rule 5 of the Election Petition Rules 1954 provides that "evidence need not be stated in the petition, but the judge, may, upon application in writing by a respondent, order such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial upon such terms as to costs and other-

wise as may be ordered". Although this rule does not apply here but I think, the principle stated therein is relevant in order to assist the judge to consider whether or not any renumbering or substitution of particulars ought to be allowed or not. Needless to say, substitution of particulars does not mean substitution of fresh particulars of new charges not covered by the charges contained in paragraph 3 of the said election. In short, the principle which guides the judge to allow charges to be amended within the prescribed time under the provisons of section 38(2) would equally apply here. For this reason, it would be necessary to consider the proposed amendments of the particulars of the charges as more particularly shown in the copy of the amended election petition annexed to the Notice of Motion and underlined in red in detail.

a) Promise to distribute and distribution of materials such as zinc and water tanks and other forms of inducement and corrupt practices to the voters in the said constituency.

The petitioner would like to withdraw (a). Since this would result in saving time and expense and as I am satisfied that the respondent would not be prejudiced thereby in the conduct of his defence, I would allow it.

b) Promise of money and the distribution of money contrary to the Election Laws before, during and after the Election.

The petitioner would like to renumber this paragraph to read (a). Since by amending paragraph 3 of the petition the petitioner has dropped the word "after" the said Election, I rule that the word "after" herein should also be deleted and I allow the substitution for the reasons stated in (a) above.

c) Promise of favour and benefits to individuals and groups of persons of the constituency contrary to the Election Laws above.

The petitioner would like to withdraw this paragraph and I allow the withdrawal for the reasons stated in (a) above.

d) By threats of withdrawals of benefits to persuade voters to cast their ballots in favour of their Berjaya candidate.

The petitioner would like to renumber this paragraph to read (c) and I would allow it for the reasons stated in (a) above.

e) The abuse of the Centenary celebration by using public funds for election campaigning before, during and after the Election by providing entertainment and other forms of public activities for the purpose of Election Campaign of the Berjaya candidate.

f) The tampering and or doctoring of ballot papers and boxes contrary to section 3(b), (c), (d), (f) and (k).

The petitioner would like to withdraw both (e) and (f) and for the same reasons stated in (a) above I would allow the withdrawals.

g) The undue influence contrary to the Constitution of Malaysia by using the Yang di-Pertuan Agong's constitutional position and his speeches in support of the Berjaya candidate by the distribution of cassette recordings of the speeches of the Yang di-Pertuan Agong.

The petitioner would like to renumber this paragraph to read (d) and since this is a renumbering I would allow it for the same reasons stated in (a) above.

h) The use and distribution of cassette recordings of speeches of the Prime Minister and the use of his photograph on the casings of the cassette with his official designation.

i) The use of and distribution of cassette recordings of speeches of the Deputy Prime Minister and the use of his photograph on the casings of the cassette with his official designation.

j) By continuing to campaign after the time allowed by the Election Commission.

k) By distribution of the dividends of the Amanah Ra'ayat Sabah, before, during and after the Election and inducing the shareholders who are voters to vote for the Berjaya candidate.

l) Ballot papers and or Ballot boxes were without authority taken out and without authority interfered with or taken contrary to section 3(1), (h) and (i) of the Election Offences Act 1954.

The petitioner would like to withdraw paragraphs (h), (i), (j), (k) and (l) and I allow the withdrawals for the reasons stated in (a) above.

For the above reasons, I allow the application in Election Petition No. 2 of 1981 subject to the deletion of the word "after" in paragraph (a) thereof.

In Election Petitions Nos. 15, 22 and 23 of 1981 the petitioners also apply to amend the dates of the election as follows:

a) In the constituency of Merotai N. 46 from March 23, 1981 to March 27 and 28, 1981;

b) In the constituency of Kuala Kinabatangan N. 29 from March 23 to 27, 1981 to March 23 to 28, 1981 and

c) In the constituency of Sugut N. 10 from March 23 to 27, 1981 to March 23 to 28, 1981.

I have already held in a separate judgment involving the same parties to these proceedings that the word "election" should be construed narrowly to mean the date when the result of the election was declared by the Returning Officer. According to a Gazette dated April 23, 1981 the result of:

a) Constituency of Merotai N. 46 was announced at Tawau on March 28, 1981;

b) Constituency of Kuala Kinabatangan N. 29 was announced at Sandakan on March 28, 1981 and

c) Constituency of Sugut N. 10 was announced at Sandakan on March 28, 1981.

In view of my judgment that a misdescription of the date of an election would not render the election petition a nullity and that a judge has jurisdiction to order an incorrect date to be amended since the respondent cannot be said to be prejudiced thereby by this error, I would now proceed to deal with the 3 Election Petitions above-mentioned.

As regards Election Petition No. 15 of 1981 the date given has been correctly stated as March 28, 1981 so there is no need to amend it. With regard to Election Petitions Nos. 22 and 23 of 1981 the date of the election in both the constituencies of Kuala Kinabatangan N. 29 and Sugut N. 10 was March 28, 1981 and leave is hereby given to amend both these petitions to March 28, 1981 only instead of from March 23 to 28, 1981.

For the above reasons, leave is hereby granted to amend Election Petitions Nos. 2, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of 1981 in terms of the proposed amendments annexed to the Notices of Motions and underlined in red subject to the deletion of the word "after" in the new paragraph (a) of the statement of particulars. Leave is also given to the petitioners in Election Petitions Nos. 22 and 23 of 1981 to amend the date of the holding of the election in the constituencies of Kuala Kinabatangan N. 29 and Sugut N. 10 to March 28, 1981.

I would hear argument as to costs of these 21 Notices of Motions taken out by the petitioners.

Order accordingly.

Solicitors: *Skrine & Co.; Rithauddeen & Aziz.*

HASSAN BIN MUSTAFFA v. REGISTRAR OF MOTOR VEHICLES SELANGOR

[O.C.J. (Hashim Yeop A. Sani J.) November 16, 1981]

[Kuala Lumpur – Originating Motion No. A. 26 of 1981]

Administrative Law – Mandamus – Order to require Registrar of Vehicles to assign particular registration number to motor vehicle – No legal right to performance of clear legal duty – Motor Vehicles Registration and Licensing) Rules, 1959, rules 4 and 13 – Road Traffic Ordinance, 1958, s. 10.

In this case the applicant was the owner of a motor cycle to which the registration number PN 1 was assigned. The applicant later transferred the motor cycle to Soh Motors and a new registration number was assigned to the motor cycle. The applicant paid a fee of $50/– for the retention of the registration number. Some three years later the applicant requested that a new vehicle be registered with the number "PN 1". This was refused and the applicant thereupon applied for an order of mandamus to direct the Registrar of Motor Vehicles, Selangor to assign the number "PN 1" to the applicant's motor vehicle.

Held: In this case the applicant had no property, franchise or personal right to the registration number "PN 1" and as he had failed to show that he had any legal right to the performance of a clear statutory duty by the Registrar and Inspector of Motor Vehicles Selangor, the application must be dismissed.

Cases referred to:

(1) *Koon Hoi Chow* v. *Pretam Singh* [1972] 1 M.L.J. 180.

CIVIL SUIT.

V. Kumar for the applicant.

Datuk Abu Mansor bin Ali, Senior Federal Counsel, for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: The relief sought by the applicant, Hassan bin Mustaffa, is an order of mandamus directed to the Registrar and Inspector